

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on March 20, 2001
at 5:00 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Bob Story (R)

Members Excused: Rep. Trudi Schmidt (D)

Members Absent: Rep. Alan Olson (R)

Staff Present: Robyn Lund, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 364, 3/16/2001; HB 627,
3/16/2001; SB 319, 3/16/2001
Executive Action: HB 627

{Tape : 1; Side : A; Approx. Time Counter : 0.3 - 2.3}

HEARING ON HB 627

Sponsor: REP. CAROL JUNEAU, HD 85, Glacier County

Proponents: Doug Barnes, Department of Corrections
Hank Whitaker, Department of Corrections
James St. Goddard, Blackfeet Tribe
Norma Bixby, House District 5
Frank J. Smith, HD 98

Opponents: None.

Opening Statement by Sponsor:

REP. CAROL JUNEAU, HD 85, Glacier County, presented HB 627, which would establish a pre-release center on a Montana reservation. She distributed information for review **EXHIBIT (feh63a01)**, Montana Department of Corrections Statistics on Native American statistics and programs. REP. JUNEAU explained that such a facility would serve the needs of American Indian inmates and facilitate their return to productive and law abiding citizenship. She explained that prerelease centers are community-based corrections facilities operated by non-profit Montana corporations under contract with the Department of Corrections, which provide supervision, counseling, assistance in locating employment, life skills training, and guidance and are for both males and females. Those who participate are released from the Montana State Prison or the Montana Women's Prison and may require more structured supervision, training, and counseling than probation affords. Prerelease placement is one of the most cost effective correctional options available. While in prerelease, offenders must: maintain employment; pay up to \$10 per day for room and board, required restitution, family support, and most medical costs; complete the programming and treatment necessary to remain crime free; and make a suitable transition back into the community.

Referring to **EXHIBIT (1)**, REP. JUNEAU stated that American Indians make up a high percentage of Montana's prison population; she reviewed the American Indian statistics for the state and the corrections facilities and observed that the state is spending a great deal of the corrections budget on American Indians. Montana needs to find a strategy to reduce the disparity in the prison system, and a prerelease facility on a reservation may be a way to do this. HB 627 represents an opportunity to establish a center dealing with American Indians that will work on positive outcomes. It would: reunite family units; utilize community resources available for education, treatment, and medical

services; and provide culturally acceptable and recognized treatment programs.

This should also be looked at in terms of an economic development program for reservation communities. A 20-bed prerelease center would offer about 17 good paying positions and a strong economic impact for providing services and goods for the prerelease center.

REP. JUNEAU stated that she recognized that there will need to be much work done to organize, hold public hearings, report to the Law of Justice Committee, and report to the 2003 Legislature a plan for this. Funds will be necessary for this. She recognized that the \$1 million requested in the bill is probably not feasible and stated that she would like to reduce that amount to \$50,000 to support the Department of Corrections in working with Montana Indian Tribes on this effort.

Proponents' Testimony:

James St. Goddard, Blackfeet Tribal Council and Chairman of the Corrections Committee on Indigenous People, expressed support of the bill being introduced by **REP. JUNEAU** and said that the Indian Nations would like a shot at rehabilitating offenders, since the state has been unsuccessful with their people. He suggested that when Indians are being rehabilitated in their own communities, among their own people, with programs that are relevant to them; they might be successful. The Indian people believe that people commit crimes because they are sick or something has happened to them, for instance drugs or alcohol; they do not believe in punishment, but in healing. The Tribes will be happy to assist in this rehabilitation of Indian people and also be responsible for some of the monetary contributions to this. He said that the bill is a plus for Montana and the Indian nations, and thanked the Blackfeet Nation and the Wyoming-Montana Tribal leaders for allowing him to speak on their behalf.

Doug Barnes, the Prerelease Unit Manager for the Department of Corrections, Community Corrections Division, offered the Department of Corrections' support of this bill. He provided the Committee with statistics on Native Americans currently in the corrections system **EXHIBIT(feh63a02)** and a pamphlet on prerelease centers **EXHIBIT(feh63a03)**.

REP. NORMA BIXBY, HD 5, Lame Deer, supports HB 627. A prerelease center does work if it is connected to a program that is culturally relevant and would cost far less than prison.

REP. FRANK SMITH, HD 98, Poplar, spoke in favor of appropriations for HB 627.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. MATTHEWS stated that prerelease requires employment, but employment opportunities on reservations are limited. He asked **REP. JUNEAU** whether this had been considered in her proposal. She replied that it was something that was discussed at length and gave examples of employment opportunities in Browning should a prerelease center be sited there. She stated that she is aware that the employment issue is an impediment for the proposal.

REP. DEE BROWN said that **REP. JUNEAU's** points are well taken, that prerelease centers close to families are good, and they encourage some economic development. She asked if those same reasons could also be used for any other reservation building a prerelease center. **REP. JUNEAU** deferred to **Mr. Barnes**, who stated that while prerelease centers are currently open in the higher population areas, it does not preclude prerelease centers in smaller communities. **Mr. Barnes** explained the process that must be followed in order to establish a prerelease program, whether it is in a higher population community or a lower population community. In follow up, **REP. BROWN** expressed concerns about joining into a compact with a sovereign nation, and who would make the decisions regarding this. She questioned whether there would be problems deciding where such a facility would be located and whether it would cause contention among the Indian Nations. She also questioned where the authority would lie should there be a problem at the prerelease center, and whether the state would have governance over a facility on a reservation. She was unsure that the state should do a compact with a sovereign nation without the federal government's involvement. **Mr. Barnes** responded that this issue would need to be resolved prior to any prerelease center being sited; the Tribal Council would need to get together and make that decision itself. In a final question, **REP. BROWN** asked if such a thing had been done before as a cooperative agreement between the federal government, the state, and Indian Nations. **Mr. Barnes** replied that he is unaware of such an agreement but will research that question for the Committee.

REP. MOOD referred to **EXHIBIT (1)** and asked where it came from. **Mr. Barnes** said that it is published quarterly by the Butte

prerelease system and is not a publication from the Department of Corrections. **REP. MOOD** then asked **REP. JUNEAU** if the information on the third page was information that she had put together, and she said that she had, based on the cost information.

REP. JUNEAU said that it would be new money. In response to a query from **REP. MOOD** whether there are federal funds that would allow them to do this, **REP. JUNEAU** said that she is unaware of any federal monies, but that it should be investigated.

CHAIRMAN CURTISS asked **Mr. Barnes** how many people the Xanthopoulos building can accommodate in treatment. **Mr. Barnes** said that he has not been involved with that proposal, but he has been on a committee that is discussing the operation for that program. That program will be providing CD services for 140 offenders.

Responding to **REP. MOOD's** question regarding the Delancey Foundation, **Mr. Barnes** said it is a program run by offenders; although he has no details, he could get that information for the Committee.

Closing by Sponsor:

In reference to questions by **REP. BROWN**, **REP. JUNEAU** noted examples of cooperative ventures between the state and Indian Nations. Compacts are a different issue. There is the Tribal-State Cooperative Agreement under state law where there are some agreements done between tribes and the state on various services with the tribes managing the service. Compacts are generally left to the gaming and water compacts where there are formal relationships and negotiations between the state and that particular sovereign nation. **REP. JUNEAU** stated that she hoped the Committee would see the worth in this effort to address the issues of the high rate of Indian people in the corrections systems.

{Tape : 1; Side : A; Approx. Time Counter : 48.9 - 54.4}

EXECUTIVE ACTION ON HB 627

Motion: **REP. JUNEAU** moved that \$1 MILLION BE STRICKEN AND CHANGED TO \$50,000 ON PAGE 1, LINE 10 DO PASS AS AMENDED.

Discussion:

REP. MOOD asked what could be accomplished with \$50,000.

REP. JUNEAU said that in working with **SEN. CHRISTIAENS**

and the Department of Corrections, they indicated that this would be an appropriate amount to request to do some planning over this biennium on the prerelease center. **REP. MCKENNEY** asked if it was her intent to keep this bill alive and pursue federal money, grants, and other possible appropriations other than state money, for funding the prerelease center, and **REP. JUNEAU** responded that the funding for a prerelease center would come back in the next session, should they find that there are federal resources available for these activities. **REP. DELL** asked if the Department of Corrections could not just do this study in house.

Vote: Motion **carried 11-1 with D. Brown voting no.**

{Tape : 1; Side : A; Approx. Time Counter : 54.4 - 58}

Motion: **REP. JUNEAU** moved that **SB 627 DO PASS AS AMENDED.**

Discussion:

Stephen Maly, Legislative Services Division (LSD), said that the bill is worded so that the appropriation must be used to establish a prerelease center. The Committee should consider whether that wording would allow \$50,000 to be used to plan.

REP. JUNEAU said that instead of the word "establish" perhaps "plan" would be better. **Mr. Maly** suggested that it may be worth her while to have someone assist him in preparing another amendment, either now or later.

REP. BROWN said that she concurs with **REP. DELL** and offered a conceptual amendment reading, "A bill for an act entitled: " An act requiring the Department of Corrections to study the feasibility of establishing a prerelease center on a Montana Indian reservation" with no money involved. **REP. JUNEAU** responded that she would like to see them proceed in this effort. **REP. BROWN** also suggested adding "requiring their report to be given to" as a requirement in that study.

REP. MOOD commented that he was on the site selection committee for the women's prison, and the bill that established that committee was extensive with specific instructions. He suggested that there needs to be considerably more direction to the Department of Corrections if they are given this charge. He also suggested that Section 1 needs to be omitted.

Mr. Maly commented that with this change they will be looking at a new bill. Section 1 is the only section of law that the Committee is dealing with, and this would fundamentally change this from an appropriation to a mandate to an agency. He urged

the Committee to consider subsequent amendments to clarify the dimensions and reporting requirements of the study.

{Tape : 1; Side : B; Approx. Time Counter : 0.5 - }

CHAIRMAN CURTISS asked what was before the Committee. **REP. BROWN** stated that it was her amendment to the title.

Motion/Vote: **REP. BROWN** moved that **A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF CORRECTIONS TO STUDY THE FEASIBILITY OF ESTABLISHING A PRERELEASE CENTER ON A MONTANA INDIAN RESERVATION AND PROVIDING EFFECTIVE DATES DO PASS AS AMENDED.** Motion carried unanimously.

REP. JUNEAU asked if the appropriation were left in could the bill stay as it is. **Mr. Maly** stated that if that bill were passed out without the appropriation and with a mandate to a state agency, it would be a substitute bill. He would need to develop a new section 1 from her concept into something concrete or the Committee could leave the appropriation in there and change subsection 2 to direct that money toward a study by the Department. **REP. JUNEAU** concurred with **Mr. Maly** on his recommendation, and suggested that perhaps a smaller amount would be left just to cover the printing costs. **REP. MCKENNEY** said that line 12 would also need to be changed.

{Tape : 1; Side : B; Approx. Time Counter : 5 - 5.6}

Motion/Vote: **REP. JUNEAU** moved that **AN APPROPRIATION OF \$5,000 BE ADDED IN SECTION 1 LINE 10 AND IN SUBSECTION 2, CHANGING THE LANGUAGE TO SAY "REQUIRING THE DEPARTMENT OF CORRECTIONS TO DO A STUDY ON FEASIBILITY" DO PASS AS AMENDED.** Motion carried unanimously.

{Tape : 1; Side : B; Approx. Time Counter : 6 - 6.3}

Motion/Vote: **REP. JUNEAU** moved that **HB 627 DO PASS AS AMENDED.** Motion carried unanimously.

HEARING ON SB 319

Sponsor: **SEN. MACK COLE, SD 4, Wheatland County, Harlowton, Judith Gap, Golden Valley County, Ryegate and Lima, Musselshell**

County, Treasure County, part of Yellowstone County, and Rosebud County

Proponents: Gail Abercrombie, Montana Petroleum Association
Bob Gilbert, City of Colstrip, Rosebud County
Jim Mockler, Montana Coal Council
Bob Williams
Michael Lange
Bob Pavlovich
Cary Hegreberg, IBEW - 233
William Duffield, Fallon County MAOGC Co's
Tom Daubert, Montana Association of Oil, Gas & Coal Counties
Mike Murphy, MWRA
Jerry Driscoll, Building Trades
Art Kleinjen, Montana Association of Oil, & Gas Cos.
Tom Ebzery, CMS Oil & Gas
Webb Brown, Montana Chamber of Commerce
Page Dringman, Montana Association of Realtors
Don Allen, WETA
Patrick M. Montalban, Northern Mt. Oil and Gas Ass.
John Williams, Mayor of Colstrip
John Youngberg, Montana Farm Bureau
Todd O'Hare, Natural Resource Policy Advisor for Governor Martz
Dave Simpson, employee of Westmoreland Resources
Mike Murphy, Montana Water Resource Association
Keith Allen, International Brotherhood of Electrical Workers, Local 233

Opponents: Patrick Judge, Mt. Environmental Information Center
Sherm Janke, Sierra Club
Dave Wood
Deborah Smith, NRDC/RNP
Tom Schneider
Betty Whiting, Mt. Association of Churches
Matthew Leow, Montana PIRG
Suzanne Davis, Northern Plains Resource Council

{Tape : 1; Side : B; Approx. Time Counter : 6.3 - 14.4}

Opening Statement by Sponsor:

SEN. MACK COLE, SD 4, Hysham, reviewed the history of the Major Facilities Siting Act (MFSA). As a result of the 1973 energy crisis, a study was commissioned by the federal government, which

projected that many coal fired complexes and coal gasification projects would be started, several in Montana. This created concerns for the environment and quality of life for residents in proposed site areas. The state lacked strong environmental laws so the Utilities Siting Act was passed by the Legislature. Over the years this act has been amended, which has added complexity and caused delays in construction and consequent expense. **SEN. COLE** gave examples of the types of expenses incurred. A legislative study in 1997 recommended further changes in the law, but the rules were not implemented. If the act is repealed as applied to energy producing facilities, it will not effect the environment. Whoever constructs a plant would still need to comply with the safeguards. This bill will remove MEPA stipulations only for generation plants. Montana will eventually need to build generation plants to avoid some of the California's problems. This bill will provide energy to Montana homes and industry, will provide jobs for Montana citizens, and will boost Montana's economy. He has an amendment to the bill, which discusses slurry lines for coal.

{Tape : 1; Side : B; Approx. Time Counter : 14.4 - 16.3}

CHAIRMAN CURTISS asked that those who testify please limit the time they take and not offer repeat testimony.

Proponents' Testimony:

Haley Beaudry, an engineer representing Columbia Falls Aluminum, asked the Committee to concur "do pass." He said that the Major Facilities Siting Act, which was touted to have been solely for the protection of the environment, specifically covered boilers that burned hydrocarbon fuels and turned them into electricity. The act should have covered all boilers or else it was not really an environmental protection act.

{Tape : 1; Side : B; Approx. Time Counter : 16.3 - 17.1}

Bob Gilbert, the city of Colstrip and County of Rosebud, stated that Rosebud County strongly supports this bill. The process has worked well and provided the state with a lot of money. We need more coal mines and electrical power. The bill does not hurt the environment, and it is a good issue.

Michael Lange, from Billings, encouraged the Committee to support SB 319. The state must look at opportunity or continue to lag behind the rest of the nation. The production of new power generation facilities in the state will enlarge the tax base, allow opportunities for job creation, and help communities grow

and prosper. He stated that it does not weaken a single environmental standard or any law.

Bob Pavlovich, from Butte representing IBEW-233, stated that there is a possibility that an energy plant could be built outside of Butte at Nesford Junction. Continental Energy was considering a 500 megawatt plant. He asked the Committee to pass the bill.

John Williams, Mayor of Colstrip, spoke in support of the bill. These power plants have been a tremendous benefit to the well-being of our state. The current energy shortage gives the state a unique opportunity and challenge in energy development and will benefit the future of our state. He read a resolution developed by the city of Colstrip in unanimous support of SB 319

EXHIBIT (feh63a04) .

Jerry Driscoll, Montana Building and Construction Trades Council and president of the Montana AFL-CIO, stated that at their last convention they passed a resolution to support any bill that would create jobs, especially generation or any other kind of plant that would employ construction workers and permanent workers. He said that this bill does this without hurting the environment and requested that the Committee give it a do pass recommendation.

Fran Larsole, State Director for the United Transportation Union, supports SB 319 with the amendments offered by **SEN. COLE,** because it does not change any environmental standards, but will result in faster permitting. It has the potential to: promote a long-term energy supply, which could benefit every resident and business in Montana; attract new business; and create new jobs in the construction, mining, and transportation industry.

{Tape : 1; Side : B; Approx. Time Counter : 25.4 - 26}

Webb Brown, Montana Chamber of Commerce, urged a do pass on the bill because it will offer a good tax base, good jobs, good power, and a good environment.

Jim Mockler, Executive Director of the Montana Coal Council, requested a do pass, saying that working with the Facilities Siting Act has been a frustrating process. Companies are not interested in building power plants in Montana if the Major Facilities Siting Act is still in place. He reviewed the tax base and the job base that Colstrip has offered for the area.

Gail Abercrombie, Executive Director of the Montana Petroleum Association, said that they are ready, willing, and able to provide the natural gas to the coal fired power plants, which have a lot of natural gas needs that go either in overfiring or cofiring depending on the facility. This legislation changes some aspects of pipelines so that they do not have to go through all the hoops of the major facilities siting act. The pipelines are fully subscribed, so to get the volume of gas to the coal fired power plants there will need to be dedicated gas pipelines coming into them so that the gas is not interruptible. She supports the legislation.

Cary Hegreberg, Montana Wood Products Association, pointed out that the demand for electric power outstrips the available supply in the northwest. He cited examples of large industrial companies that are operating on a day-to-day basis. We need short-term and long-term fixes; he urged a do pass since this bill provides the long-term fix.

John Youngberg, Montana Farm Bureau, stated that much of Montana's production agriculture relies on irrigation, and irrigators are concerned that there will not be a consistent supply of power available for irrigation. Much of the conservation in past years has been through the use of sprinkler irrigation. In order to use this method of irrigation, the price of electricity cannot be increased significantly because they would be forced to turn off pumps and irrigate with ditches. Ditches leave more waste water and take more water from the streams. It is imperative that this bill be passed.

{Tape : 1; Side : B; Approx. Time Counter : 33.7 - 34.2}

Todd O'Hare, Natural Resource Policy Advisor for Governor Martz, stated that Governor Martz supported this bill in the Senate and continues to support it. He urged the Committee do pass.

Dave Simpson, an employee of Westmoreland Resources, Incorporated, urged a do pass.

Don Allen, representing Western Environmental Trade Association (WETA), said that this bill is important to all segments of the economy and asked the Committee to do pass.

Tom Daubert, representing the Montana Association of Coal, Gas, and Oil Counties, said that the counties he represents support this bill and believe it could expedite economic development and the creation of new power generation facilities. He also represents Ash Grove Cement Company, which supports this bill as

part of the long-term solution to Montana's energy pricing crisis. He urged support of this bill.

Page Dringman, representing the Montana Association of Realtors, who urge support of this bill because of their concern that no housing in Montana will be affordable. Montana does not have decent paying jobs, and businesses and industries are shutting down because they cannot afford electricity to operate. This bill is a step in the right direction to correct the energy crisis we are facing.

Tom Ebzery, a Billings attorney representing CMS Oil and Gas, urged the Committee to adopt this legislation. He endorsed the amendments raising the pipelines to 24 inches and the rest of the bill.

Mike Murphy, representing the Montana Water Resources Association, went on record as supporting SB 319.

William Duffield, County Commissioner from Fallon County, went on record as supporting SB 319 because it is good stewardship, and he urged Committee support for it.

Art Kleinjan, County Commissioner of Blaine County and Vice Chairman of the Montana Association of Coal, Gas, and Oil Counties, urged passage of this bill.

Keith Allen, representing the International Brotherhood of Electrical Workers, Local 233, requested that they pass this bill.

{Tape : 1; Side : B; Approx. Time Counter : 42.8 - 49.7}

Opponents' Testimony:

Patrick Judge, Montana Environmental Information Center, stated that the siting act has guided responsible development of energy resources and does not prevent development; it ensures that development is done right. Energy projects should be consistent with the values of Montanans, beneficial to the people of the state, and protective of the environment. The Major Facilities Siting Act is needed as much now as when originally enacted. We are in the midst of an energy crisis, and there is enormous pressure for Montana to develop its energy resources to the benefit of outside states. There is need to ensure that development is done right. The same environmental laws we have now were in place at the time that the Major Facilities Siting Act was initially enacted, but even with those laws in place,

Montanans felt that there was a need for a different law to guide the development of energy resources. During this Legislature, the Montana environmental laws are being weakened so they will not provide an adequate back stop. The Major Facilities Siting Act was passed as a streamlining measure because there were a number of different permits needed and it allowed everything to be done at one time. Furthermore, this legislation could invite litigation since there is a constitutionally declared right to a clean environment in the state, and MEPA and MFSA are the ways that the state insulates itself from those lawsuits. MFSA works. Currently, Continental Energy is proposing a 500 megawatt power plant near Butte, and they are not asking for any short cuts or favors. They say that the process works well and is successful.

Changes to MFSA have already been made so that it is no longer what it once was or should be. There are supply and demand imbalances in the western region; there are structural problems resulting from deregulation in this and other states; and there is a great deal of proposed generation that is far ahead of anything that Montana will have come on line. By 2003, there will be plenty of energy generation out there. In looking at a long-term strategy for Montana, there is time to go through a 12-month or 6-month process. If the Legislature is looking at a true desire to streamline, then he suggested that the Committee look at HB 591, which shortens all the time frames and reduces or eliminates fees. He urged Committee opposition to this bill.

Sherm Janke, Sierra Club, spoke to the need for energy efficiency and conservation. The bill strains credibility, since there is no floor beyond which large scale plants would be excluded from this exemption. He asked how it is not in the public interest for power generation facilities to escape the review process that is mandated in the act. Supporters of this want to make it as easy as possible for industries to construct coal-based generating facilities in Montana whether the power is used in state or not, and there is no guarantee that the power would be used in state; we are already exporting almost half of the power generated in-state now. He observed that if the House passes HB 473 and if it passes SB 319, and if the Senate passes HB 473, then the citizens will not have MEPA to fall back on. He commented on the parallel between this Legislature's intent and the days when the mining industry dominated the late 19th century Legislature. It appears to him, that the Legislature is trying to make environmental laws the scapegoat for Montana's economic woes, while making the environment the victim.

He stated that the last fuel that should be burned, if you take global warming seriously, is coal. In burning coal, you get more carbon dioxide output, the main culprit in global warming, than

any other fuel. One of the proponents mentioned coal burning with natural gas. Natural gas is the last fuel that should be burned for power generation because it is the fossil fuel in lowest quantity, and it should be burned for space heat. Montana has the fourth largest wind energy potential in the nation. If the Committee is looking for jobs, and really thinks that Montana should be involved in energy creation, why not think of a renewable, non-polluting resource that adds to the tax base; provides jobs for electrical and construction workers; and provides income for agricultural people, who can lease the location for the wind generating facility and still raise their crops. This has all the benefits and few of the drawbacks. If up to 20 percent of the electrical requirement is met by wind, then fluctuation is not an issue.

Debbie Smith, Natural Resource Defense Council and Renewable Northwest Project, noted that the state should learn from its history. The siting act was enacted in response to an energy shortage, and the perceived fear that building would occur precipitately; the power would be sold out of state; and there would be no framework with which to deal with such a dilemma. This is something that should be kept in mind as we move forward. This bill encourages building and providing incentives for new generation, which will no longer be economical in a decade or so when the United State limits carbon dioxide emissions. This will happen eventually, and we would wind up with inoperable fossil fuel plants. SB 319 will also not save any time since the siting act review permits occur all at once. The bill also provides an incentive to the wrong purpose since developers of power plants have all the incentive they need in high market prices. To put in place a mechanism that would allow developers to site power plants without input from the public is wrong.

Finally, she said that the region needs to diversify the resource mix, needs to include clean, sustainable energy resources to supplement the fossil and hydro resources, and improve efficiency of the energy use. There also needs to be a plan for how to get there. Montana is not in energy shortage right now. We do not need to rush into action, but need to develop a plan to best meet the long-term energy needs. She requested the Committee oppose the bill.

Dave Wood, citizen of Lewis and Clark County, stated that he is concerned that we are hearing the same message as when Montana Power asked the state to deregulate the energy industry based on their needs. It was critical to them that it was in our interest to deregulate because of the money that would be saved in energy rates. SB 319 is the same sort of situation, this time the state

has been asked by Continental Energy Services to change our laws to allow them to do what they tell us is in our interest.

SEN. COLE indicated that this facility in Butte would make power available for electrical energy for our homes. At a meeting that **Mr. Wood** attended, he was informed by representatives of Continental Energy, that the power would be put in the Bonneville Power Administration (BPA) grid, which serves Washington, Oregon, and California, and Montana is not a part of it. As a result of this power plant using natural gas, citizens of Montana will be paying more for natural gas. **Mr. Wood** distributed testimony **EXHIBIT (feh63a05)**.

Betty Whiting, Montana Association of Churches, called upon all citizens, corporations, and governmental representatives to seek ways to safeguard the quality of the air, land, and water, which we and our descendants need to live healthy lives and to have productive employment. SB 319 leaves only transmission lines and geothermal units. She asked them to find in the codes where the protection that everyone says exists is, especially since so many of the environmental laws are being changed this session. Generating plants in the western United States are making a lot of money for dividend holders. Montana is in a position where there is plenty of opportunity, but energy generation must be done in a safe, environmentally sound way. The organization also supports alternative energy production projects and think that they should be given equal consideration. These generating plants that people are hoping will happen do not guarantee lower rates for Montana. In conclusion, she reminded the Committee that without good air, land, and water quality, none of us would want to live in Montana, and certainly, no business would want to come into Montana. As a part of a good creation, humanity is to respect and care for the earth and all its creatures.

Matthew Leow, representing Montana Public Interest Group, distributed an article to the Committee **EXHIBIT (feh63a06)**. He stated that in exempting generation facilities, speeding up the review process, and raising the bar for public request for a hearing, this bill will make the MFSA irrelevant. Proponents are saying that we do not need MFSA because we have MEPA, but MEPA will not make it out of this session alive. Even if MEPA were effective, it does not address the issues that MFSA does. MFSA is specifically designed to address the issues of generation facilities. Supporters of gutting MFSA point to the current energy crisis and contend that it should be easier to build generating facilities in Montana.

In 1997, at the request of Montana Power Company (MPC) and other industries in Montana, the Legislature passed deregulation.

After the bill was passed, MPC expressed its intention to sell all of its assets in Montana. In 2000, the deregulated market in California went haywire. In fall of 2000, Montana industries began to feel the impacts of the market fluctuations from California, and we began to lay off workers in Montana. By the end of 2000, Montana power customers were facing an uncertain deregulated market; supply, transmission, and distribution of energy in Montana is owned by out-of-state companies; and large customers are shutting their doors and laying workers off. The answer we get for this disaster, asked for by industry, is to gut environmental laws.

The idea behind this is that we can build our way out of California's energy crisis. There are already projects on board to take care of California's energy crisis. So, people are saying that for the long haul, we need to build more generation facilities in Montana. If that is the case, any energy generation facilities built in Montana, need to be addressed analyzing all costs involved. This should include costs to the environment and local community. This is what MFSA is designed to do. MEPA does not address location. MFSA addresses social and environmental impacts. Development of generating facilities in Montana should not supercede the interests of those who live and farm in communities. MFSA does not say that generation plants should not be built, but it intends that there should be input from local people on the siting options, community impacts, and environmental impacts. The impetus of this bill is a temporary energy problem, but the passage will have longlasting negative consequences. For these reasons, he asked that the bill not be passed.

Tom Schneider, former Commissioner and Chairman of Montana PSC, stated that SB 319 emasculates the core of the law and what the siting act was designed to address. The vision of Montana's sound environmental and social policies was to establish a credible public process and substantive standards to protect Montana's natural, cultural, and social environment, and to encourage responsible development at good locations with good technologies, just as you would want good public policy to do. During the past decade, there has been a continuing erosion of many of those fundamental parameters and laws. Montana has bent over backward in the name of efficiency, streamlining, jobs, and shortening of the environmental process.

In 1997, **SEN. COLE** successfully enacted an industry bill that is currently maligned by them. They received exactly what they wanted, and now they are back for another shot. That is to completely eliminate the core of the energy projects at issue in the energy crisis. It is a cruel paradox that SB 319 emasculates

the siting act at the time that it is most needed to protect the aforementioned values. Quality projects at good locations with low environmental and social impacts should be encouraged as the existing law does. The good projects need to be put on a level playing field with the not-so-good projects that deserve and require substantial additional examination and evaluation. He encouraged the Committee to step back from this bill and recognize that it is in opposition to Montana values.

Informational Testimony: None.

{Tape : 2; Side : A; Approx. Time Counter : 21.3 - 58.7}

Questions from Committee Members and Responses: REP. DEE BROWN

asked SEN. COLE to respond to Mr. Janke's remark that there is no guarantee that the generation would be used in Montana. SEN. COLE said that this bill does not address whether energy will stay in the state or not.

REP. DELL asked SEN. COLE to elaborate on what the bill does with transmission. SEN. COLE said that as the bill stands now, the only change is in the pipelines, which are changed from 17 to not greater than 25 inch.

REP. MOOD asked Mr. Beaudry if the Continental Energy plant in Butte is a done deal. Mr. Beaudry said that he was not personally involved, but believes that it is underway. It was intended to be a 230 megawatt power plant, to keep it below 250 to avoid MFSA requirements. The attorneys for the state had the legal opinion that a 230 megawatt plant with new equipment with pipeline running maximum pressure and flow rate and the equipment running at high efficiency and all of the controls in the plant not working there is a possibility to go to 250 megawatt plant. When this happened, the additional cost and time on the front end to comply with MFSA would require additional revenues, which would be derived from the additional 270 megawatts, which is how it went to 500 megawatts. In follow up, REP. MOOD said that it appears that all the plants are being built to use natural gas.

Mr. Beaudry responded that this is the case. REP. MOOD said that in Montana it seems that coal should be used since we have so much of it; he asked why the plants are going to natural gas.

Mr. Beaudry said that when the United States began to rely heavily on gas plants the development of the combined cycle gas and the plants could be sited relatively quickly compared to coal fired plants and gas was cheap. Mr. Beaudry went over the expenses that would be involved in running a gas plant and a coal plant.

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In response to a question from **REP. FORRESTER**, **Mr. Judge** said that the figure he gave them was obtained from the California Energy Commission's web page, and was 60,000 megawatts proposed for construction in the western states, 15,000 of which have been proposed but have not filed applications. **REP. FORRESTER** asked further if 60,000 megawatts have been proposed, how much of that would be absorbed by California for its power supply. **Mr. Judge** replied that he did not recall that figure. **Mr. Beaudry** said that he believes that it is 61,000 megawatts. **REP. FORRESTER** asked **Mr. Judge** if he believes that anyone would build a power plant in Montana if there is overbuilding in the manner that he has heard. **Mr. Judge** responded that it is happening right now, but that he cannot project that himself. He does believe that it is essential to run proposals that do come in through a reasonable and due process. **REP. FORRESTER** asked **Mr. Judge** how the state would be affected if the siting act were emasculated, given the constraints on the transmission system. **Mr. Judge** said that his argument goes both ways, if they are not going to come, why would we gut the law. He suggested that it is more prudent to proceed in a cautious manner unless there is a compelling reason to scrap the laws. In final follow up, **REP. FORRESTER** asked what happened when the law was gutted in 1997, how many plants were built. **Mr. Judge** said that none have been built, yet.

REP. MATTHEWS asked **Ms. Smith** about her comment that in 10 years coal will no longer be a factor because of air quality standards. **Ms. Smith** said that she said that it may be unwise for the state to provide incentives such as the streamlining bill for plants that become uneconomical before the end of their lifetime. There is a lot of debate regarding the regulation of carbon dioxide emissions. During President Bush's campaign, he said that he was going to regulate carbon dioxide emissions from power plants, but now he has backed out of that commitment. Carbon dioxide is one of the principle contributors to global warming. It is not a question that it will be done, but when and how it will be done. Investments in large fossil fuel burning facilities need to be considered carefully by legislators and investors that will fund the facilities. In response to questions from **REP. MATTHEWS**, **Mr. Mockler** stated that one forest fire puts more carbon dioxide into the atmosphere than Colstrip would in 1,892 years and that there are two 600 megawatt coal fired plants being built in Wisconsin and one in Missouri, and a 500 megawatt plant being built in Wyoming. **Mr. Mockler** went over the costs of gas versus coal. In response to **REP. MOOD**, **Mr. Janke** said that the power plants he noticed in Wyoming are coal fired plants. Responding to **REP. MOOD**'s question regarding the abandonment of wind

generating installations begun in the 1970's, **Mr. Janke** said that one problem with the wind generation was that there was not a good buy-back provision with MPC, which was not obligated to buy back the power at the time. In amplification, he explained that wind power generation looks simple, but the blades are not simple and receive a great deal of stress. Those problems have been largely addressed and wind machines are pretty reliable these days. There is a wind generation comeback in California and southwestern Minnesota. The growth factor for wind generation in this country is about 30 percent per year.

REP. MOOD followed up with a question regarding objections from environmental groups regarding the negative impact on the visual quality of the landscape as a result of wind generation.

Mr. Janke said that regardless of how electrical energy is generated there will be some adverse impact, but some impacts are more benign than others. The problem of avian mortality has been addressed by using larger turbines, which are slower, and cleaner towers. **REP. MOOD** said that there are also severe negatives with wind generation then, to which **Mr. Janke** said that not all problems are addressable, but that the problems with wind turbines are resolvable. There is no guarantee that technology can solve all problems, but Montana should choose the option with the fewest trade-offs and downsides. He is thinking about the future and the future quality of life.

REP. MOOD asked **SEN. COLE** if the people attempting to build the coal fired plants have the same goals in mind. **SEN. COLE** said that they are trying to deal with the negative impacts, and the plants are much different than they once were. **REP. MOOD** asked him what the bill does to the air quality act, and he responded that it does nothing. **SEN. COLE** said that all of the other environmental acts are completely in place.

REP. STORY asked **Mr. Janke** what happens when the wind doesn't blow. **Mr. Janke** responded that it is necessary for there to be a mix, which will eventually consist of photovoltaics, wind, biomass, and hydrogen. Current studies indicate that if 20 percent of the grid requirement is met by wind, the fluctuation aspect is not serious.

Closing by Sponsor:

SEN. COLE said that in Montana regardless of whether there is MFSA, there are still many laws and policies that are in place to protect the environment. **REP. FORRESTER** has offered to carry the bill.

{Tape : 2; Side : A; Approx. Time Counter : 58.7 - 60}

REP. MOOD assumed the chair for this portion.

HEARING ON SB 364

Sponsor: CHAIRMAN AUBYN CURTISS, HD 41, Fortine

Proponents: Matt Brainard

Opponents: None.

Opening Statement by Sponsor: **REP. AUBYN CURTISS, HD 41, Fortine,** explained SB 364, which is a bill to protect the sovereignty of Montana from the actions of regulatory agencies. Arizona, Idaho, and Oregon have initiated constitutional defense funds and have used them to defend their states' rights. She offered amendments to her bill.

{Tape : 2; Side : B; Approx. Time Counter : 0.3 - 11.5}

Proponents' Testimony:

Matt Brainard, a PSC Commissioner, said that the bill is timely, and it could be used generally as a legal defense fund. It is time for the state to consider something other than the general fund or the attorney general's office as the payer on this sort of thing. He briefly touched on some of the lawsuits in which the state has been involved and said that the concept of having some sort of defense fund is appropriate. Despite the funding issue, it is a worthwhile bill. He digressed on the issues before the PSC, and the role of the Federal Energy Regulatory Commission (FERC) in the push to eliminate state sovereignty on energy issues. **REP. CURTISS** has a good idea in this bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. DELL asked **Mr. Brainard** if FERC should come to the support of PPL as a wholesaler under federal auspice, would that be a scenario in which this bill would be used. **Mr. Brainard** said it is a possibility that an agency would pursue the issue with the resources it has, but with this bill there is a council to decide on the merits and the value of the case in committing those funds to a legal defense.

REP. STORY asked **REP. CURTISS** what is to prevent the appropriated funds from being used inappropriately by the council. He asked if the fund is set up as the cost of litigation or is it broader than that. **REP. CURTISS** reviewed the specifics of her amendment **EXHIBIT (feh63a07)**. She commented that unless there is a crisis, she does not anticipate spending any of this money.

REP. FORRESTER asked **REP. CURTISS** if Governor Martz's office is behind this appropriation since it comes from general fund.

REP. CURTISS said that the Governor's office is not at all behind it, but if he would like to add language to it, he is welcome.

REP. FORRESTER asked if she had the support of the Speaker of the House to fund the bill, to which she replied that they have not taken it seriously.

CHAIRMAN MOOD about the motivation for the other states to develop their defense funds, and **REP. CURTISS** stated that in Arizona the corrections system was being challenged. Idaho's had to do with protecting its water rights.

Closing by Sponsor:

REP. CURTISS closed saying that the bill must be acted upon tonight.

{Tape : 2; Side : B; Approx. Time Counter : 11.5 - 17.5}

EXECUTIVE ACTION ON HB 364

Motion: **REP. BROWN** moved that **HB 364 DO PASS.**

Motion: **REP. CURTISS** moved that **THE AMENDMENTS DO PASS.**

Discussion: **REP. STORY** asked if amendment number 4 fits in the title of the bill. **Mr. Maly** replied that it can because of the way the title reads in its original form. The bill speaks almost exclusively to federal government issues, but it goes on to say issues that effect the state and the health, safety, and welfare of its residents. This is the reasoning why amendment number 4 goes right to that language. It is arguable that if someone does not like the bill or amendment that they may raise the question, but it is legal. **REP. STORY** said that the title is pretty broad, but then it becomes pretty narrow in definition. **REP. CURTISS** asked if it would be more appropriate to call it a sovereignty council, and **REP. STORY** said that it should have a description of a council that is broader than constitutional. **REP. FORRESTER** said that constitutional defense council is not defined, so the

Legislature can say it is anything it wants. **Mr. Maly** said that it is probably not a legal issue if constitutional is left in, and there is some likelihood that the issue would rise to a constitutional level when it is the federal government versus the state. Another possibility would be to strike constitutional from the rest of the bill and call it a defense council. **REP. STORY** asked about the make up of the council, and **REP. CURTISS** said that the thought behind having PSC commissioners as two of the council members, was that they were people who knew the issues and would be available.

Vote: Motion **carried unanimously.**

{Tape : 2; Side : B; Approx. Time Counter : 17.9 - 24.5}

Motion: **REP. CURTISS** moved that **HB 364 DO PASS AS AMENDED.**

Discussion: **REP. DELL** said that he envisions that FERC will jump in should the state try to regulate the supply, but he thinks that this may be premature, and the state just does not have the money for this. **CHAIRMAN MOOD** commented that such a situation is what this bill is about, and **REP. CURTISS** said that there is a real discrepancy between state statute and HB 390. She thinks that the state may even be in court over that issue. **Mr. Maly** said that there are inconsistencies in the law which may be at issue should it come to that. **REP. DEE BROWN** commented that this bill is needed and suggested some improvements to the makeup of the council. There was further discussion over amendment 4, and **Mr. Maly** said that there was an error that he would change.

{Tape : 2; Side : B; Approx. Time Counter : 24.5 - 27.2}

Motion/Vote: **REP. STORY** moved that **AN AMENDMENT TO ALLOW THE DEFENSE FUND TO BE USED TO DEFEND THE STATE IN LITIGATION INVOLVING ELECTRICAL ENERGY BE ADOPTED.** Motion carried 11-1 with Forrester voting no.

{Tape : 2; Side : B; Approx. Time Counter : 27.2 - 27.6}

Motion/Vote: **REP. CURTISS** moved that **HB 364 DO PASS AS AMENDED AND AMENDED AGAIN.** Motion carried 9-3 with R. Brown, Forrester, and Juneau voting no.

REP. CURTISS said that **SEN. COLE** had invited the Committee to have a joint dinner with his committee at the country club on April 3 or 4.

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Mr. Maly went over some housekeeping issues.

ADJOURNMENT

Adjournment: 5:00 P.M.

REP. AUBYN A. CURTISS, Chairman

ROBYN LUND, Secretary

AC/RL

Transcribed by Sydney Taber.

EXHIBIT (feh63aad)